



Income Tax DOR Directive 94-4

Massachusetts
Department of
Revenue

Trusts Created for a Minor; Taxation of Income Accumulated for a Non-Resident; No Tax Status

Issue:

What is the effect of a testamentary power of appointment granted to a minor beneficiary under the terms of a trust, with respect to that beneficiary's interest in the accumulated trust income ("Accumulated Interest") being treated as vested under G.L. c. 62, § 10(a)?

Directive:

A testamentary power of appointment will cause a beneficiary's Accumulated Interest to vest under G.L. c. 62, § 10(a) only when the beneficiary is capable of exercising that power and the interest is not otherwise uncertain. Therefore, where a testamentary power of appointment may not be exercised by a beneficiary because the beneficiary is a minor, this power cannot, of itself, cause the Accumulated Interest of such beneficiary to vest under c. 62, § 10(a). Similarly, when a minor beneficiary's interest is not vested for purposes of c. 62, § 10(a), it is not vested for purposes of the "no tax status" provisions, G.L. c. 62, §§ 5(a) and 12. This directive is effective with respect to trusts created subsequent to the date of its issuance. Where an Accumulated Interest becomes vested under c. 62, § 10(a) within the course of a taxable year, such interest will be treated as vested under that provision for the entire year.

Discussion of Law:

1. Non-resident Minor Beneficiaries

General Laws c. 62, § 10(a) applies to trustees ("Qualified Trustees") "under a trust created by a person or persons, any one of whom was an inhabitant of the commonwealth at the time of the creation of the trust or at any time during the year for which the income is computed, or who died an inhabitant of the commonwealth, any one of which trustees or other fiduciaries is an inhabitant of the commonwealth." See G.L. c. 62, § 10(c).

Chapter 62, § 10(a) provides that income received by Qualified Trustees "shall be subject to the taxes imposed by this chapter to the extent that the persons to whom the same is payable, or for whose benefit it is accumulated, are inhabitants of the commonwealth." *Id.* Moreover, that section provides that income received by Qualified Trustees "which is accumulated for unborn or unascertained persons, or persons with uncertain interests shall be taxed as if accumulated for the benefit of a known inhabitant of the commonwealth." *Id.* Finally, c. 62, § 10(a) provides: "For purpose of this section ... income shall be deemed to be accumulated for unborn or unascertained persons or persons with uncertain interests when thus accumulated by [Qualified Trustees] for the benefit of any future interest *other than a remainder presently vested in a person or persons in being not subject to be divested by the happening of any contingency expressly mentioned in the instrument creating the trust.*" *Id.* (emphasis added).

A trust typically provides for a contingent beneficiary in the instance where the designated beneficiary dies. Death is, therefore, a contingency expressly mentioned in such trusts by which the beneficiary's Accumulated Interest may be divested. See G.L. c. 62, § 10(a). See also *State Tax Commission v. Blinder*, 336 Mass. 698 (1956). However, where a trust beneficiary possesses a testamentary power of appointment which he or she is capable of exercising, his or her Accumulated Interest is not treated as being subject to divestiture by reason of the contingency of death, since the power permits the beneficiary to bequeath such interest. See *State Tax Commission v. Loring*, 350 Mass. 568 (1966); *State Tax Commission v. New England Merchants Bank of Boston*, 355 Mass. 417 (1969). On the other hand, where a trust beneficiary possesses a testamentary power of appointment which he or she is incapable of exercising, the power is without legal significance under c. 62, § 10(a) and therefore cannot, of itself, cause the Accumulated Interest to vest for purposes of that provision.

A testamentary power of appointment possessed by a trust beneficiary who is a non-resident minor cannot, of itself, cause that beneficiary's Accumulated Interest to vest under c. 62, § 10(a) if the minor does not have the legal capacity to make a will. While such a power of appointment cannot cause the Accumulated Interest of a non-resident minor beneficiary to vest under c. 62, § 10(a), that interest may be otherwise vested depending on the particular facts. See *Loring*, 350 Mass. at 571.

2. No Tax Status and Minor Beneficiaries

General Laws c. 62, § 5(a), provides that an individual's taxable income shall be exempt from Massachusetts tax if his or her Massachusetts adjusted gross income for the taxable year does not exceed eight thousand dollars. General Laws c. 62, § 12 provides that a trustee may, at the request of a beneficiary for whom the trust income is accumulated, claim the no tax exemption set forth in c. 62, § 5(a), provided that the conditions of that section are otherwise met. The requirement that a beneficiary's interest be vested under c. 62, § 10(a), discussed above, similarly applies to the no tax exemption. See *State Tax Commission v. Blinder*, 336 Mass. 698 (1956). Thus, for purposes of the no tax exemption, the existence of a power of appointment which the beneficiary is incapable of exercising does not cause a minor's Accumulated Interest to vest. However, such interest may be otherwise vested depending upon the particular facts.

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